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AUG 30 2010

OFFICE OF PETITIONS

In re Patent No. 7,704,993 : DECISION ON APPLICATION FOR  
Issued: April 27, 2010 : PATENT TERM ADJUSTMENT  
Application No. 10/561,071 :  
Filing or 371(c) Date: May 26, 2006 :  
Dkt. No.: 10426.0066-00000 :  
:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT-POST GRANT," filed June 25, 2010. This matter is being properly treated under 37 CFR 1.705(d).

The application for patent term adjustment (PTA) under 37 CFR 1.705(d) is **DISMISSED**.

The above-identified application matured into U.S. Pat. No. 7,704,993 on April 27, 2010. The instant application for patent term adjustment was timely filed in accordance with 37 CFR 1.705(d). The patent issued with a patent term adjustment of 612 days. This adjustment included 334 days of adjustment pursuant to 37 CFR 1.702(b).

Patentees assert that the patent is entitled to an overall adjustment of 614 days, including 336 days under 37 CFR 1.702(b).

Patentees' arguments have been carefully considered, but are not persuasive. A review of the record reveals that the Office properly accorded the application 334 days of adjustment pursuant to 37 CFR 1.702(b). The period of adjustment pursuant to 37 CFR 1.702(b) commenced December 20, 2008 and ended November 18, 2009 and totals 334 days.

The calculation of delay pursuant to 37 CFR 1.702(b) is based on a national stage commencement date of December 19, 2005. The requirements for early commencement under 35 USC 371(f) were not met in this application. Thus, as the expiration of the 30-month period pursuant to 35 U.S.C. 371(b) fell on a weekend, the period expired on the subsequent business day. See, PCT Rule 80.5. Accordingly, the commencement date is December 19, 2005. Thus, the period of over three year delay commenced December 20, 2008, the day after the date that is three years after the date of commencement, and ended November 18, 2009, the day before the date that the request for continued examination was filed.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period, which began on December 20, 2008, ended November 18, 2009, the day before the RCE was filed, and not November 19, 2009, the day of filing of the RCE, as perhaps calculated by patentees. See, 35 U.S.C. 154(b)(1)(B)(i). Thus, the over 3 year period is 334 days and not 336 days.

In view thereof, no adjustment to the patent term will be made.

Any request for reconsideration of this decision must be submitted within ONE MONTH of the mail date indicated herein. The time period for seeking reconsideration is not subject to extension under 37 CFR 1.136.

Receipt is hereby acknowledged of the \$200.00 application fee required per 37 CFR 1.18(e).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.

*/ALESIA M. BROWN/*

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